

CITY COUNCIL MEETING

July 21, 1993

REQUEST TO NOT DESTROY RECORDS PURSUANT TO RESOLUTION NO. 93-18

John Kraai, 351 Del Mont, Lodi, urged that the records that are to be destroyed pursuant to Resolution No. 93-18 be saved because it is too soon to destroy them.

It was stated by members of the City Council and staff that the majority of these records are over five years old, these records comply with the code regarding destruction of records, and that there was six months available for the Council, staff and public to view them and not one person has looked at those records for the past four months.

Following further discussion, Council Member Davenport made a motion, Mann second for discussion, to not destroy the records and that they be given to Mr. Davenport. City Attorney McNatt informed the City Council that this motion cannot be voted on due to the fact that it was not on the agenda. Therefore, Council Member Davenport made a motion to put this matter on for the next City Council agenda. The motion died for lack of a second. Council Member Davenport stated for the record that he feels that the destruction of these records is illegal and he will pursue it.

These records will now be destroyed.

FILE NO. CC-6 AND CC-16

MEMORANDUM
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TO: Councilmember Ray Davenport
FROM: City Attorney
DATE: July 20, 1993
SUBJ: Destruction of Public Records

The question presented at our July 19, 1993 meeting with Cheryl Reinke, Frank Gayaldo, and David Christy was whether certain Finance Department records, previously approved by the Council for destruction, could be turned over to individuals in lieu of actual destruction. Not surprisingly, my research failed to turn up a case or statute exactly on point.

Under the Public Records Act (Government Code Section 6250 and following) members of the public have a right to inspect all public documents except those specifically exempted such as personnel records or taxpayers information. It makes no mention of the conditions or requirements for destruction. Government Code Section 34090 (attachment A hereto) addresses destruction of public documents generally, but does not specify any particular method of destruction. I noted the statute does not say that such obsolete records can be "otherwise disposed of" in lieu of destruction. However, that is not entirely dispositive of the question here. No California or federal cases under the Freedom of Information Act were found.

This leads me to believe that in general, a city could possibly agree to dispose of obsolete records or documents by allowing someone to haul them away in lieu of destruction, although this is not clear based on the statutory language. However, in the present case, the City Council in Resolution 93-18 (attachment B) directed the "destruction" of the records. For staff to do otherwise now and simply allow the records to be removed would probably require City Council approval to deviate from the original authorization.

Respectfully submitted,



Bob McNatt
City Attorney

BMN:br

Attachments

cc: Mayor Pennino
Councilmember Sieglock
Councilmember Snider
Councilmember Mann
City Manager
Vicky McAthie, Accounting Manager

CCCOM816/TXTA.07A

CITIES GENERALLY

§ 34090

Div. 1

§ 34081. Repealed by Stats.1978, c. 76, p. 208, § 2, urgency, eff. April 7, 1978

Historical Note

The repealed section, added by Stats.1949, c. 79, § 1, related to affidavits affecting boundaries and necessary documents.

Article 4

MISCELLANEOUS

Section

- 34090. Destruction of city records; excepted records; construction.
- 34090.5. Destruction of records; conditions.
- 34090.6. Destruction of recorded radio and telephone communications.
- 34090.7. Duplicate records less than two years old; destruction; video recording media.
- 34091. Charter drafting expenses; appropriation.
- 34091.1. Adoption or change of street name; resolution.
- 34092. Adoption or change of name or number of street or place; duty of city clerk.
- 34093. Petition; definition; misrepresentations concerning contents or effect; circulation of petition containing false or forged names; punishment.

Article 4 was added by Stats.1949, c. 79, p. 101, § 1.

§ 34090. Destruction of city records; excepted records; construction

Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

This section does not authorize the destruction of:

- (a) Records affecting the title to real property or liens thereon.
- (b) Court records.
- (c) Records required to be kept by statute.
- (d) Records less than two years old.
- (e) The minutes, ordinances, or resolutions of the legislative body or of a city board or commission.

This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed.

(Added by Stats.1949, c. 79, p. 101, § 1. Amended by Stats.1955, c. 1198, p. 2214, § 2; Stats.1975, c. 356, p. 801, § 1.)

EXHIBIT B

RESOLUTION NO. 93-18

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING DESTRUCTION OF CERTAIN RECORDS
RETAINED BY THE LODI FINANCE DEPARTMENT

WHEREAS, in accordance with Government Code, section 34090, the City Attorney has filed his written consent to the destruction of certain records retained by the Lodi Finance Department, an inventory of which is attached hereto, marked Exhibit A, and thereby made a part hereof;

NOW, THEREFORE, BE IT RESOLVED, by the Lodi City Council that:

1. The records heretofore identified are no longer required.
2. The Lodi City Council finds that the City Attorney has given his written consent to the destruction of the records inventoried on Exhibit A attached hereto and the destruction of those records is hereby authorized.

Dated: January 20, 1993

I hereby certify that Resolution No. 93-18 was passed and adopted by the Lodi City Council in a regular meeting held January 20, 1993 by the following vote:

Ayes: Council Members - Mann, Sieglock, Snider & Pennino (Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None



Jennifer Perrin
City Clerk

INVENTORY OF CERTAIN RECORDS RETAINED BY THE LODI FINANCE DEPARTMENT REQUESTED
TO BE DESTROYED PURSUANT TO GOVERNMENT CODE, SECTION 34090

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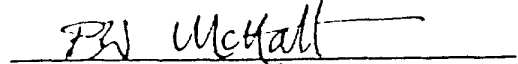
1. Payroll Activity*	1/77-1/7/90
2. Administrative Leave Balances	1/87-12/88
3. Labor Distribution Reports*	7/86-12/88
4. Time Reports (Bi-Weekly)	1/86-12/88
5. Employee Balances & Step Increases	1/87-12/88
6. Vacation Accruals	1/87-12/88
7. Overtime Reports	1/87-12/88
8. Union Dues Deductions	1987-1988
9. Payroll Changes	1987-1988
10. Work Order Number Listings	1/86-12/88
11. Trial Balances	7/86-6/88
12. Revenue Report*	7/85-6/88
13. Revenue Ledgers	7/85-6/88
14. General Ledger*	7/85-6/88
15. Appropriation Ledgers	7/85-6/88
16. Miscellaneous Memorandums (Journal Vouchers)	7/86-6/88
17. Expenditure Reports*	7/84-6/88
18. Accounts Payable Registers*	7/87-6/89
19. Claim Vouchers & Invoices	7/87-6/89
20. Canceled Bank of America Payroll Checks	7/86-6/88
21. Canceled Farmers & Merchants Bank Account Payable Checks	7/86-6/88

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H. D. Flynn
Finance Director

Dated: 4/13/93

APPROVED FOR DESTRUCTION


Bob McNatt
City Attorney

Dated: 1-14-93